Editor's note: 82 I.D. 174; Appealed -- aff'd, Civ. No. 75-1152 (D.D.C. July 29, 1976)

RICHARD W. ROWE DANIEL GAUDIANE

IBLA 75-15 Decided April 24, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offer F-694.

Affirmed.

1. Alaska: Land Grants and Selections: Generally -- Notice: Constructive Notice

   Published notice of a proposed State selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

2. Alaska: Land Grants and Selections: Validity -- Alaska: Statehood Act -- Notice: Generally -- Patents of Public Lands: Generally

Section 6(b) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or entry under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

3. Alaska: Land Grants and Selections: Mineral Lands -- Alaska: Land Grants and Selections: Validity -- Alaska: Statehood Act -- Patents of Public Lands: Reservations

Section 6(i) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so conveyed. The Act does not require that federal patents to the State include a proviso to the above effect, rather, must contain a reservation for minerals.

4. Alaska: Land Grants and Selections: Generally -- Alaska: Oil and Gas Leases -- Alaska: Statehood Act -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease

Section 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the

Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

5. Alaska: Land Grants and Selections: Applications -- Applications and Entries: Priority -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases: Preference Right Leases -- Regulations: Applicability

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference-right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is

tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first qualified applicant in the event the Department decides to issue a lease.

6. Alaska: Land Grants and Selections: Generally -- Oil and Gas Leases: Patented or Entered Lands -- Patents of Public Lands: Effect

The Department of the Interior has neither-jurisdiction over nor authority to issue oil and gas leases for lands patented to the State of Alaska.

APPEARANCES: Max Barash, Esq., Washington, D.C., for appellants; James N. Reeves, Esq., Office of the Attorney General, for the State of Alaska; Karen A. Shaffer, Esq., Office of the Solicitor, Department of the Interior, for the United States.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Richard W. Rowe and Daniel Gaudiane have appealed from a decision of the Alaska State Office, Bureau of Land Management

(BLM), dated May 15, 1974, rejecting their joint noncompetitive oil and gas lease offer, F-694, for lands in Block 4, T. 4 N., R. 16 E., U.P.M., Alaska, on the grounds that the United States no longer has jurisdiction over the lands, nor authority to issue leases thereon, as the lands in the subject offer, including the mineral rights, were patented to the State of Alaska on March 27, 1974.

On January 11, 1968, appellants filed their joint oil and gas lease offer in the Fairbanks Land Office. On January 18, 1968, the Land Office notified appellants that their application was in conflict with a Native protest and that further action would be suspended pending final disposition of Native claims by Congress. On December 9, 1968, pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970), the State of Alaska filed selection application F-10324 encompassing the subject land. The State selection was similarly affected by the Native protest.

On January 17, 1969, the Secretary of the Interior issued Public Land Order (P.L.O.) 4582 which withdrew all public lands in Alaska from all forms of appropriation and disposition under the public land laws (except locations for metalliferous minerals), including leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), and selection by the State of

Alaska pursuant to the Alaska Statehood Act. See 34 FR 1025 (January 23, 1969). P.L.O. 4582 was subsequently modified a number of times until it was revoked pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 708, 43 U.S.C. § 1616(d)(1) (Supp. III, 1973); however, the lands were again withdrawn from mineral leasing by P.L.O. 5186, 37 FR 5589 (March 16, 1972). P.L.O. 5186 permitted the resumption of land selections by the State of Alaska under the Alaska Statehood Act.

Following release of the lands for State selection, the Alaska State Office directed the State of Alaska to publish notice of its application as required by 43 CFR 2627.4(c), in order to allow all persons claiming an adverse interest in the land to file in the appropriate land office their objections to the issuance of a patent. Following publication, the Director, BLM, issued a decision on March 27, 1974, tentatively approving the State's selection. On the same day, a final certificate was issued to the State for Patent No. 50-74-0097.

In its decision dated May 15, 1974, the State Office informed appellants that:

> Under a continuing policy established by the Secretary of the Interior, all [oil and gas lease] offers filed prior to PLO 4582 would be maintained

> of record until such time as the lands were either 1) once again made available for mineral leasing or 2) patented and no longer under the jurisdiction of the Federal government. (See Vance W. Phillips, Aelisa A. Burnham, 14 IBLA 79 (December 11, 1973).)

Accordingly, as the subject land was patented to the State and no longer under the jurisdiction of the United States, appellants' offer was rejected.

The appellants have presented numerous contentions in support of their appeal. Their five main points are: 1) it was improper for the State Office to issue a patent to the State without having first given appellants actual notice and an opportunity to object to the issuance of the patent; 2) the issuance of the patent to the State without the inclusion of certain provisions for the protection of vested rights and State mineral interests violated the requirements of the Alaska Statehood Act and rendered the patent void or voidable; 3) the filing of appellants' oil and gas lease offer segregated the land from all other forms of appropriation and created priority rights for appellants superior to all other adverse claims, including a subsequent selection by the State; 4) the BLM file for the State selection fails to disclose approval by the President or his designated representative as required by section 6(b) of the Statehood Act for lands selected north and west of the National

Defense Withdrawal Line established by section 10(b) of the Statehood Act; and 5) the State of Alaska became the successor-in-interest to the United States' interest in the subject land with the obligation to issue a noncompetitive oil and gas lease to appellants on their pending priority offer. Appellants request that, under the circumstances, the Board recommend cancellation of the "unrestricted" patent and direct the BLM to issue a lease to appellants; or in the alternative, that the Board direct the BLM to refer appellants' lease offer to the appropriate office of the State of Alaska for further consideration based upon their priority offer.

[1] In their initial argument, appellants contend that it was improper for the Department to issue a patent to the State without having first given appellants actual notice and an opportunity to object to the issuance of the patent. In accordance with 43 CFR 2627.4(c), the State of Alaska published notice of its proposed selection for five consecutive weeks in order to bring to the knowledge and attention of all persons who were interested in the lands described therein the fact that the State proposed to establish and perfect its claim to the selected lands. The State's publication specifically stated that, "One purpose of this notice is to allow all persons claiming the lands adversely to file in this [BLM] office their objections to issuance of patent to the State." Publication in

accordance with regulatory requirements is adequate notice. Duncan Miller, 20 IBLA 1 (1975); Chemi-Cote Perlite Corp. v. Bowen, 72 I.D. 403 (1965); see also 66 C.J.S. Notice §§ 13, 18 (1955), and cases cited therein. Accordingly, we find that, as a result of the publication, appellants received adequate notice and an opportunity to object to the issuance of the patent to the State of Alaska.

In their next argument, appellants contend that it was improper for the Department to issue a patent to the State which failed to describe the lands selected as vacant, unappropriated, and unreserved, and as not affecting any valid existing claim, location, or entry under the laws of the United States. Appellants also object to the fact that the patent did not include a proviso prohibiting the State from subsequently reconveying the mineral interests it acquired.

[2] Section 6(b) of the Statehood Act provides that the State may select up to 102,550,000 acres from the public lands in Alaska which are vacant, unappropriated and unreserved at the time of their selection, provided the selection does not affect any valid existing claim, location or entry under the laws of the United States. The Act does not require that patents to the State include a proviso to that effect. Compliance with this provision is fulfilled by the Department excluding from

selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands. In the present case, following publication of the State's proposed selection, the BLM, in its decision tentatively approving the State's application, made a finding that, "The lands described * * * are not known to be occupied or appropriated under the public land laws, including the mining laws * * *." We conclude that this procedure adequately assured conformity with the requirements of the Statehood Act.

[3] We also reject appellants' argument that it was improper to issue a patent to the State without including a proviso prohibiting the State from reconveying acquired mineral interests. Section 6(i) of the Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all of the minerals in the lands so conveyed. All lands or minerals disposed of contrary to the provision are to be forfeited to the United States by appropriate proceedings instituted by the United States Attorney General. Again we note that the Act does not

require that federal patents to the State include a proviso to the above effect. Rather, it is subsequent State conveyances which must contain a reservation for minerals. Adherence to this requirement of the Act is adequately assured by the fact that the laws of the United States are the supreme law of the land, and state action in contravention can be set aside. Lee v. Florida, 392 U.S. 378, 385-86 (1968).

Appellants next contend that the filing of their oil and gas lease offer segregated the land from all other forms of appropriation and created priority rights for them superior to the subsequent selection by the State. Appellants urge that the language within section 6(b) of the Statehood Act which protects "any valid existing claim, location, or entry under the laws of the United States," applies to oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920. Appellants argue that once their oil and gas lease offer was filed, the lands described therein were no longer "vacant, unappropriated and unreserved" lands available for State selection in accordance with section 6(b) of the Statehood Act. Appellants additionally urge that their oil and gas lease offer is encompassed by the exception provided for in section 6(g) of the Statehood Act, which provides in part that:

> * * * [T]he State of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right shall have precedence * * * but not over other preference rights now conferred by law. * * *

[4] In Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969), aff'g Charles Schraier, A-30814 (November 21, 1967), the Court considered the arguments raised by appellants in this case. The Court concluded that the language in section 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims did not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act. The Court stated the following at 666-67:

> This language in § 6(b) is inapplicable to an application for an oil and gas lease under the Mineral Leasing Act of 1920. That Act provides that lands subject to disposition under the Act, which are believed to contain oil or gas deposits, "may be leased by the Secretary of the Interior." The Act directed that if a lease was issued, it had to go to the first qualified applicant, but "it left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4, 85 S. Ct. 792, 13 L. Ed. 2d 616 (1965). [Footnote omitted.] The fact that the Bureau published a notice that it would receive offers to lease did not preclude a later exercise of discretion to decline to lease. An application for lease, even though first in time or drawn by lot from among simultaneous offers, is a hope, or perhaps expectation, rather than a claim.
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> * * * *

> An applicant under the Mineral Leasing Act may have the further right to a lease where he is entitled to a lease over anyone else under the law and the Secretary has exercised his discretion to execute a lease. [Footnote omitted.] But his proposal does not rise to the level of "claim" or "right" within the saving clause of the Statehood Act where there has been no such determination to lease.

The Court also concluded at 667-68 that an oil and gas lease offer did not fall within the "existing valid rights" or "equitable claims" exception provided in section 6(g) of the Statehood Act. The Court interpreted the exception as applying to those persons who would lose permits already granted, who owned valuable improvements on the land, or where there was some other form of physical possession or improvement made pursuant to law.

Appellants urge that the holding in Schraier is inapposite to the present case. Appellants argue that the Court failed to consider the long line of decisions of the Department of the Interior which allegedly hold that an application for an oil and gas permit or lease segregates the land from adverse appropriation and that an applicant has a priority right over any adverse interest thereafter sought to be initiated. Appellants also argue that P.L.O. 4582, which allegedly protected and preserved appellants' oil and gas lease offer for the duration of the freeze, was not considered in Schraier, nor did the

Court consider 43 CFR 2627.3(b)(2), which allegedly provides for the rejection of a State selection to the extent that the lands are included within a prior oil and gas lease application. Finally, appellants urge that the Court did not consider the State of Alaska's regulation § 517.21(a) of Subchapter 1, Chapter 5, Division of Lands, of the State Department of Natural Resources, which expressly recognizes and confirms the rights of pending priority federal lease offerors to the issuance of noncompetitive oil and gas leases in the absence of classification of the land as competitive.

Again we are unpersuaded by appellants' arguments. The numerous Departmental cases relied upon by appellants do not support their proposition that an application for an oil and gas lease segregates the land from all other conflicting appropriations. The cases cited by appellants have to do with issued oil and gas leases and permits which were considered to be interests in public land under the laws of the United States, which appropriated the land to private use, and precluded subsequent acquisition until the interest was officially canceled and removed. See, e.g., Luta T. Pressey, 60 I.D. 101, 102 (1947), and cases cited therein. 1/

1/ Appellants place considerable reliance upon Solicitor's Opinion, 55 I.D. 205, 211 (1935), wherein the Solicitor discussed what constituted an "existing valid right" protected in a savings provision of a temporary withdrawal. Contrary to appellants'

Next appellants urge that the Court in Schraier failed to consider the "vested right" granted to an oil and gas lease offeror under P.L.O. 4582. Section 2 of the order provided in part that all oil and gas lease offers then pending before the Department would be given the same status and consideration, upon enactment of the Alaska Native Claims Settlement Act, as though there had been no intervening period. Section 3 of the order provided that the State of Alaska would, subject to the provisions of section 2, have preferred rights of selection pursuant to the Alaska Statehood Act.

[5] Contrary to appellants' assertion, P.L.O. 4582 did not vest appellants with a right to a lease upon the expiration of the withdrawal. The order simply assured them that their lease offer would be given the same priority "status and consideration" if the Department, in its discretion, decided to issue any lease at all. Vance W. Phillips, supra, modified, Vance W. Phillips, 19 IBLA 211 (1975); George E. Utermohle, Jr., 3 IBLA 94 (1971). The Department, however, has exercised its

fn. 1 (continued)
assertion, the Solicitor did not include mineral lease applications within this category. Rather, he simply noted that the particular withdrawal did not specifically preclude discretionary issuance of such leases: "In order that this opinion may be more comprehensive, it is deemed pertinent to add, although the precise question was not submitted, that permits and leases may be granted under the Mineral Leasing Act * * * for the withdrawn lands * * *." (Emphasis added.)

discretion in this area by determining that an oil and gas lease offer will be rejected to the extent of a conflict with a tentatively approved Alaska State selection application, even though the lease offer was filed before the selection application. Union Oil Co. of California, A-29907 (February 20, 1964). This policy is reflected in 43 CFR 2627.3(b)(2), which appellants erroneously interpret as providing for the rejection of a State selection to the extent that the lands are included within a prior oil and gas lease offer. The cited regulation provides in part:

> * * * Conflicting applications and offers for mineral leases and permits, except for preference right applicants, filed pursuant to the Mineral Leasing Act, whether filed prior to, simultaneously with, or after the filing of a selection under this part will be rejected when and if the selection is tentatively approved by the authorized officer of the Bureau of Land Management * * *.

In accordance with this regulation (and its predecessor 43 CFR 76.12(b)) the Department has consistently held that an oil and gas lease offer must be rejected when approval is given to a subsequently filed State selection. Duncan Miller, supra; Haruyuki Yamane, 19 IBLA 320 (1975); Yolana Rockar, 19 IBLA 204 (1975); Lloyd W. Levi, 19 IBLA 201 (1975); Standard Oil Co. of California, 71 I.D. 1, 2 n. 2 (1964); Union Oil Co. of California, supra;

Violet Goresen, A-29268 (April 24, 1963); J. L. McCarrey, Jr., A-28436 (November 14, 1960); cf. Mountaineering Club of Alaska, 19 IBLA 198 (1975); Cripple Creek Coal Co., 70 I.D. 451 (1963). Accordingly, we reject appellants' argument that the regulation requires rejection of a State selection to the extent that the lands are included within a prior oil and gas lease offer.

Appellants argue in the alternative that while they may not have a vested right to a noncompetitive lease, they do come under the "preference right" exception in 43 CFR 2627.3(b)(2), as they contend that the Mineral Leasing Act confers upon them a "statutory preference right" to a noncompetitive lease. Again we reject appellants' argument as having no merit. The preference rights referred to in the regulation do not include oil and gas lease offers. In William J. Howe, A-26205 (August 28, 1951), the Department described the legal distinction between an existing oil and gas lessee who had a "preference right" to a new lease, as opposed to an oil and gas lease offeror who simply gained a "statutory priority right" as the first qualified applicant in the event the Department decided to issue a lease. Appellants' application falls within the latter category. 2/ This distinction is further buttressed

2/ A specific "preference right" exception for oil and gas lease offers, which does not apply in this case, can be found in section 6 of the Act of July 3, 1958, 72 Stat. 322. See McGreghar Land Co., 67 I.D. 81 (1960); Zena L. Cochran, A-28297 (June 8, 1960); Pexco, Inc., 66 I.D. 152 (1959).

in Schraier v. Hickel, supra at 667-68, where the Court refused to consider petitioner's oil and gas lease offer as coming within the exception in section 6(g) of the Statehood Act for "preference rights now conferred by law." 3/ Accordingly, we conclude that no rights of appellants were in any way violated by issuance of the patent to the State of Alaska.

Appellants next urge that the BLM file for the State's selection fails to disclose approval by the President or his designated representative as required by section 6(b) of the Statehood Act. In the final proviso of section 6(b), there is the requirement that no selection shall be made in the area north and west of the National Defense Withdrawal Line established by section 10(b) of the Act, without approval of the President or his designated representative. The State's selection in this case is included within that area.

Under the terms of Executive Order 10950, 26 FR 5787 (June 27, 1961), the Secretary of the Interior was designated to exercise the authority vested in the President to approve selections of land in this area, provided the Secretary of Defense, or his designee, concurred in the proposals. The final paragraph of the Executive Order reads as follows:

3/ For examples of preference rights conferred by law, see, e.g., 30 U.S.C. §§ 223, 229, 262, 272, 282 (1970); see also 43 CFR 3520.1-1.

> As the Secretary of the Interior may direct, the Under Secretary of the Interior, an Assistant Secretary of the Interior, the Director of the Bureau of Land Management, or the Operations Supervisors of the Bureau of Land Management in Alaska are severally authorized to exercise the authority vested in the Secretary by this order.

By order published in 26 FR 7303 (August 11, 1961), the Secretary of the Interior delegated his authority to the Under Secretary and Assistant Secretaries, severally.

On January 10, 1969, the State Office transmitted copies of the State's selection application to the designee of the Secretary of Defense and to the Director, BLM. By letter dated August 15, 1971, the Defense Department approved State selection of the land. The BLM file, however, does not contain evidence of approval by the Secretary of the Interior or by any of his delegates under the order dated August 11, 1961. Tentative and final approvals were given by the Director, BLM. 4/

4/ The Board has been unable to find any delegation which grants the Director, BLM, the authority to approve selections in the subject area. We do not believe that such authority is included within the Director's general delegation powers. See Departmental Manual § 235.1.1. The Director's general delegation is limited by § 235.1.2(2) which states that the Director is not delegated any authority regarding, "any action to be taken with the approval or concurrence of the President, or the head of any department or independent agency of the Government."

We also note that section 200.1.4 of the Departmental Manual states the following: "Authority of the Secretary to Delegate. The Secretary of the Interior has broad power to delegate his authority. However, nothing in this Delegation Series empowers any officer

Appellants have requested that the Department recommend that action be taken to cancel the patent. We note first that there is a presumption that all necessary steps required by law had been taken before patent issued to the State. Maxwell Land-Grant Case, 121 U.S. 325, 381-82 (1887). However, assuming arguendo, that a mistake in authorization does exist in the present case, the issue before the Board is whether the Department should recommend to the Attorney General that suit be brought to cancel the patent. Moore v. Robbins, 96 U.S. 530 (1877); Bryan N. Johnson, 15 IBLA 19, 21 (1974); Charles Kik, A-27872 (December 1, 1959). The Department will not ordinarily recommend that the Attorney General initiate suit to cancel a patent unless: (1) the Government has an interest in the remedy by reason of its interest

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fn. 4 (continued)
or employee of the Department to exercise authority which the Secretary by the terms of the legislation, Executive Order or other source of authority may not delegate. Thus, authority given to the President by law and delegated to the Secretary by Executive Order cannot be redelegated except as provided in the Executive Order. If the Executive Order confines redelegation to specified officers * * * these specific positions and authorities must be referred to in the redelegation. * * *" (Emphasis added.)

Also, we take administrative notice of a memorandum to the State Director, Alaska, from the Acting Chief, Division of Lands and Recreation, BLM, dated September 13, 1961, which states in part the following: "[B]y order published in the Federal Register on August 11, 1961 (26 F.R. 7303), the Secretary delegated his authority to the Under Secretary and the Assistant Secretaries severally. * * * At present, authority to approve selections north of the 'PYX Line' [National Defense Withdrawal Line] has not been delegated to the Director, Bureau of Land Management. Until such time as a delegation is made, we must obtain the approval of the Office of the Secretary along with the concurrence of the Department of Defense. * * *" (Emphasis in original.)

in the land; (2) the interest of some party to whom the Government is under obligation has suffered by issuance of the patent; (3) the duty of the Government to the people so requires; or (4) significant equitable considerations are involved. United States v. San Jacinto Tin Co., 125 U.S. 273 (1887); Bryan N. Johnson, supra; Dorothy H. Marsh, 9 IBLA 113, 115 (1973). As the Government is under no obligation to appellants, we do not believe this case falls within category (2), nor are any of the other categories pertinent to appellants. Accordingly, we find no basis for recommending that suit be initiated to cancel the patent. However, we do recommend that the BLM make certain that proper approval was made pursuant to section 6(b) of the Alaska Statehood Act. If a mistake did occur, the Department may, in alternative to recommending cancellation of the patent, either properly ratify the prior authorization, issue a new patent, or take other action which is appropriate under the circumstances. 5/

5/ We note that if an error did occur, it appears to be a minor one in nature. The approval requirement in section 6(b) of the Statehood Act is for the benefit of the Department of Defense. That Department considered the merits of the selection and concurred in its approval. As stated in a letter to Maurice H. Stans, Director, Bureau of the Budget, from Acting Secretary of the Interior, Elmer F. Bennett, dated November 16, 1960: "The establishment of this national defense area, of course, is designed to give the military departments a freer hand in planning the defenses of Alaska and of the entire United States * * *. * * * If in point of fact the land desired for selection by the State is militarily unimportant, the State should be allowed to select it everything being equal. The strategic value of the land is best determinable by the military department concerned. It is believed, therefore, that the question whether in any case a State selection should be allowed for lands within the segregated area should be addressed by the Department of the Interior, which administers the land, to the Department of Defense. If the determination is not adverse to selection, approval can be secured without further referral." Assuming the Department concludes that the mistake (if it exists) does not merit Departmental correction, the State of Alaska may decide to take action in order to remove any cloud which may exist on its title to the lands. See McGarrahan v. Mining Co., 96 U.S. 316 (1877).

[6] Finally, we turn to appellants' remaining argument, namely, that under regulations promulgated by the State of Alaska, the State is required to issue a noncompetitive oil and gas lease to appellants based upon their priority offer filed pursuant to the Mineral Leasing Act of 1920. As correctly noted in the State Office decision, after the subject lands were patented to the State, the Department lost jurisdiction over the lands. Russ Journigan, 16 IBLA 79, 80 (1974); Bryan N. Johnson, supra; R. E. Puckett, 14 IBLA 128, 130 (1973); Pexco, Inc., 66 I.D. 152, 154 (1959). If appellants wish to continue their efforts to acquire an oil and gas lease on the subject lands, they must pursue their request with the State of Alaska in accordance with the laws of that State.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge